

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 01—0124**  
**Adjusted Gross Income Tax—Net Operating Loss**  
**For Tax Year 1999**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**I. Adjusted Gross Income Tax—Net Operating Loss**

**Authority:** 45 IAC 3.1-1-109; IC § 6-3-1-1 *et seq.*

Taxpayer protests the denial of a net operating loss deduction from its adjusted gross income tax.

**STATEMENT OF FACTS**

Taxpayers operate two dine-in and carryout restaurants in Indiana, offering a daily buffet featuring pizza, spaghetti, and a salad bar. Taxpayers also have arcade/vending areas in each restaurant and award prizes on some of the games when players earn tickets. The investigative summary discovered that the shareholders of the S-Corporation, husband and wife, moved from Indiana to Kentucky in 1998 and failed to file an Indiana IT-40PNR for 1999, the tax year at issue. Taxpayers' power of attorney filed a protest concerning a failure to deduct a net operating loss from the S-Corporation's profits which would have reduced taxpayers' adjusted gross income tax. More facts will be added as necessary.

**I. Adjusted Gross Income Tax—Net Operating Loss**

**DISCUSSION**

Taxpayers, husband and wife, are the sole shareholders of the S-Corporation through which they operated two Indiana restaurants during the tax year at issue, 1999. Taxpayers lived in Indiana through part of the 1998 calendar year and then moved to Kentucky. The auditor, pursuant to 45 IAC 3.1-1-109, adjusted taxpayers' adjusted gross income tax because they failed to file an Indiana IT-40PNR for 1999. Indiana and Kentucky have a reciprocal agreement for individual income tax, which applies, only to salaries, wages, and tips. Business income is not part of this agreement. Subchapter S corporations are required to withhold adjusted gross income tax on any nonresident shareholders' portion of taxable income whether distributed or not.

Taxpayers' power of attorney filed a protest concerning a net operating loss, which was not at issue in the audit investigation. Further, taxpayers' power of attorney never contacted the

Department with evidence to support the protest despite numerous letters sent to the power of attorney requesting information. Finally, taxpayers cannot deduct a net operating loss for Indiana adjusted gross income tax purposes because there is no corresponding loss on the federal return for the tax year at issue. The federal return is the beginning point for determining Indiana adjusted gross income tax. *See*, IC § 6-3-1-1 *et seq.*

**FINDING**

Taxpayers' protest is denied.

DMF/JMM/MR 040807